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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,003	11/17/2003	Tomohide Aoki	26H-004 DIV	9406
23400	7590	08/03/2004	EXAMINER	
POSZ & BETHARDS, PLC 11250 ROGER BACON DRIVE SUITE 10 RESTON, VA 20190			MICHALSKY, GERALD A	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/713,003

Applicant(s)

AOKI ET AL.

Examiner

Gerald A. Michalsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 9, 13 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-4, 9 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5, 17 and 18 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>17 November 2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: In claim 19, line 3, the case is described as being formed of reinforced polyamide. The description of elected Figure 15 on page 46 of the specification does not specify that the case is formed of reinforced polyamide.

Applicant is required to provide a description on page 46 of the specification indicating that the casing of Figure 15 is formed of reinforced polyamide.

2. The disclosure is objected to because of the following informalities: In the reference to the parent application in line 2 of paragraph 0000, "filed November 13, 2001, now U.S. Patent No. 6,679,282," should be inserted after "09/987,147".

Appropriate correction is required.

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeCapua et al in view of Benjey et al '741. DeCapua et al describes connector portion 12 as

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being formed of "HDPE". It is submitted that this is the equivalent of "adhesive polyethylene" as claimed. However, if it is determined that HDPE is not the equivalent of "adhesive polyethylene", as claimed, it is submitted that since mount 12 of DeCapua et al is welded to the fuel tank, to substitute the claimed material for the material of DeCapua et al would have been obvious to a person of ordinary skill in the art at the time the invention was made. This claim is considered met as above, except that the cover of DeCapua et al is described as being formed of "any suitable structural, engineering-grade plastics material such as acetyl" at the bottom of column 2, instead of the recited "polyamide". It would have been obvious in view of the disclosure at column 4, line 11 of Benjey et al '741 to provide polyamide as the material of choice since DeCapua et al specifically indicates that "any suitable structural, engineering-grade plastics material" is appropriate and Benjey et al '741 clearly suggests polyamide as a "suitable structural, engineering-grade plastics material".

6. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al in view of DeCapua et al and Benjey et al '741. Inlet neck 12d of Figure 11 of Brown et al is read as a "connector portion". Inlet neck 12 of Figure 11 of Brown et al is described as being as "constructed of a material weldable to fuel tank 214 so that a secure coupling can be made at weld 208 that is not permeable to hydrocarbon emissions" at column 6, lines 47-50. It would have been obvious to a person of ordinary skill in the art the time the invention was made that "adhesive polyethylene" would have been such a material. These claims are considered met by Figure 11 of Brown et al as above except that the valve housing 204 of Figure 11 of Brown et al is not disclosed as

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being formed of cover and a case being bonded together with the cover being formed of polyamide. It would have been obvious in view of the bonding of upper and lower valve housing portions 26 and 28 of DeCapua et al to provide valve housing 204 of Brown et al as upper and lower portions which are bonded together. It would have been obvious in view of the disclosure at column 4, line 11 of Benjey et al '741 to form the upper portion of the valve body 204 of Figure 11 of Brown et al of polyamide, since Benjey et al '741 suggests polyamide as a material which is "fuel and hydrocarbon impenetrable or impermeable" as disclosed at column 5, lines 51-53 of Brown et al.

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claim 5 is further rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,679,282. Although the conflicting claims are not identical, they are not patentably distinct from each other because they do not support separate patents. Claim 1 of Aoki et al '282 is readable on the embodiments claimed in claim 5 herein, and claim 5 herein is readable on the embodiments claimed in claim 1 of Aoki et al '282.

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9. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 1-4, 9, and 13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 15 July 2004.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald A. Michalsky whose telephone number is (703) 308-1049. The examiner can normally be reached on M-F 5:30 AM - 2 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (703) 308-1272. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gerald A. Michalsky
Primary Examiner
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